UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,255	08/31/2001	Nobuhiro Funasako	1872/0J700	1960

7278 7590 08/25/2003

DARBY & DARBY P.C.
P. O. BOX 5257
NEW YORK, NY 10150-5257

EXAMINER	
JUSKA, CHERYL ANN	

ART UNIT	PAPER NUMBER
1771	7

DATE MAILED: 08/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/945,255	FUNASAKO ET AL.	
	Examiner	Art Unit	
	Cheryl Juska	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 August 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) *1-5* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *6-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *31 August 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-5, drawn to a woven fabric, classified in class 442, subclass 189^{+}.

II. Claims 6-8, drawn to a tufted carpet, classified in class 428, subclass 95.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions of Group I and Group II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful as a geotextile or a secondary carpet backing and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Louis DelJuidice on August 6, 2003, a provisional election was made with traverse to prosecute the invention of Group II, claims 6-8. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-5 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 6 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 6 is indefinite because it is unclear what applicant intends to encompass by the phrase "the second set of pile being...arranged in double lines longitudinally front and rear together with respect to the first pile yarns, and disposed between adjacent ones of the first piles." For example, what does the terms "front" and "rear" refer to? What does the term "ones"

refer to? For the purpose of examination, claim 6 is interpreted as having two pile sets arranged as shown in Figure 1.

9. Claim 7 is similarly rejected for the use of the phrase "wherein two to five threads of the wefts lie between adjacent ones of the first set of piles tufted in the same stitch row of the first pile yarn and are also disposed between adjacent ones of the second set of piles tufted in the same stitch row of the second pile yarn." It is unclear what applicant is intending to encompass with this claim recitation. For the purpose of examination, claim 7 is interpreted as having two to five wefts grouped between tufts as shown in Figure 1.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claim 6 and 8 is rejected under 35 USC 103(a) as being unpatentable over JP 02-111372 issued to Fikushima et al. in view of US 4,658,739 issued to Watkins and US 4,841,889 issued to Watkins.

Fikushima teaches a primary backing for a tufted carpet comprising a woven fabric wherein either the warp or weft yarns comprises multi-stratum (i.e., bicomponent) fibers (abstract). The bicomponent fibers are flat yarns of a high melting point resin which are coated with a low melting point resin. The primary backing is stabilized by thermally adhering the bicomponent fibers to each other and at the intersection with other yarns.

Fikushima teaches the presently claimed invention with the exception of the claimed pile pattern. However, said pattern is known in the art. For example, Watkins '739 teaches an apparatus for tufting a carpet comprising a staggered needle tufting machine (abstract). Additionally, Watkins '886 teaches an apparatus for tufting a carpet having the pattern shown in Figure 9 (col. 7, lines 8-17). Thus, it would have been obvious to one of ordinary skill in the art to employ the tuft pattern of Watkins in the tufted carpet of Fikushima with the expectation of producing a dimensionally stable and decorative carpet.

With respect to the claimed needle gauge ranges, it would have been obvious to one of ordinary skill in the art to select the claimed ranges, based upon the desired tuft density and pattern. It has been held that discovering an optimium value of a result effective variable involves only routine skill in the art. *In re Boesch*, 205 USPQ 215.

With respect to the claimed yarn denier (dtex), it is asserted that this limitation is obvious over the prior art. Specifically, the claimed denier range is well known in the art of carpet. Applicant is hereby given Official Notice of this fact. Thus, it would have been obvious to one of ordinary skill in the art to select the claimed denier in order to produce a quality carpet pile. Therefore, claims 6 and 8 are rejected as being obvious over the cited prior art.

Allowable Subject Matter

12. Claim 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The prior art does not teach or fairly suggest a tufted carpet having the claimed primary backing, claimed arrangement of first and second piles, and the claimed spacing of the two to five weft threads.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

14. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

CHERYL A. JUSKA
PRIMARY EXAMINER

cj
August 11, 2003